subscribers is set to expire at the end of this year. Under section 339(a)(2)(A), once a satellite operator makes the local signal of a network available under section 338 to customers receiving the distant signal under the Grade B doughnut provisions, the customers must choose between the local signal and the distant signal. They may continue to receive the distant signal if they elect to do so, but the subscribers may not receive both the distant and local signals of the network. Customers who were eligible for distant signals under the Grade B doughnut provisions but were not receiving such signals under those provisions on October 1, 2004, will no longer be eligible for such grandfathering. Thus, the universe of grandfathered households is fixed as of that day and cannot be expanded thereafter.

New section 339(a)(2)(B) allows a satellite operator to provide both a local and a distant signal of a network to a subscriber who is unserved over-the-air by a Grade B signal of the network's local affiliate, so long as the satellite operator was offering the local signal of the network pursuant to section 338 by Jan. 1, 2005, and complies with certain notice obligations. If the satellite operator was not offering the local signal of the network pursuant to section 338 by Jan. 1, 2005, the satellite operator may provide both the distant and local signals to the subscriber only if the subscriber sought to subscribe to the distant signal before the satellite operator made the local signal available, and the satellite operator meets certain notice obligations.

New section 339(a)(2)(C) provides that a satellite operator may not provide a signal of a distant affiliate of a network to a consumer if the consumer is not lawfully receiving the signal from the satellite operator on the date of enactment of SHVERA and the consumer seeks to receive the distant signal after the satellite operator began making the local signal of that network available in the market.

New section 339(a)(2)(D) allows a local affiliate to waive any of the limitations in section 339(a)(2) as they apply to the retransmission, into the local affiliate's local market, of the distant signals of a station affiliated with the same network. The waiver can be as broad or as narrow as the affiliate wants. For example, a local affiliate can waive the application of section 339(a)(2) to one or more consumers in the local market, with respect to one or more specific distant affiliates of the same network, and with respect to one or more satellite operators. The broadcaster may do so as part of a negotiated agreement and for any reason, including common ownership among the stations. This is intended to be a private negotiation, not one over which the FCC or any other governmental body must preside; nor must any governmental body grant or approve the waiver. Whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, although a broadcaster may grant a waiver as part of an agreement made with a satellite operator or other parties. A broadcaster is also not required to execute any particular document as part of the waiver process, although parties who intend to rely on such a waiver or any attendant agreement will likely want to reduce the waiver and the agreement to writing, so that they have something to refer to should any dispute arise in the future. Such waivers are distinct from the waivers referred to in section 339(c)(2) of the Communications Act, although broadcasters are free to execute both types of waivers in tandem or with a single document. Unlike the section 339(c)(2) waivers, broadcasters must affirmatively grant section 339(a)(2)(D) waivers; they shall not be deemed granted by the broadcaster just because the broadcaster has not responded to a request within a certain amount of time. Nor are section 339(a)(2)(D) waivers or agreements subject to the section 325 good-faith negotiation requirement. Section 339(a)(2)(D) will facilitate agreements that provide consumers with more viewing choices.

New section 339(a)(2)(E) requires satellite operators to provide networks, within 60 days after enactment of SHVERA, with lists of certain subscribers to whom they offer distant signals. It also requires satellite operators, within 60 days after commencing in a market local-into-local service under section 338, to provide networks with lists of the subscribers to whom they offer certain distant signals. The notice obligations are designed to help networks monitor compliance with the new ''no-distant-where-local'' requirements that SHVERA creates.

New section 339(a)(2)(F) makes clear that the distant-signal limitations of section 339(a)(2) do not apply to the provision of significantly viewed signals under new section 340, or to the provision of distant signals to trucks and recreational vehicles.

Nothing in section 204 of the bill is intended to affect any existing waivers under section 339(c)(2) of the Communications Act.

H.R. 4518, THE SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 2004

Mr. BARTON of Texas. Mr. Speaker, I would like to submit the following remarks for the Record.

We have before us H.R. 4518, the ''Satellite Home Viewer Extension and Reauthorization Act of 2004'' (SHVERA). The bill will also be known as ''The W.J. 'Billy' Tauzin Satellite Television Act of 2004,'' in honor of our former House Energy and Commerce Committee chairman. Naming this bill after Chairman Tauzin is only fitting, as he has done so much to foster the growth of satellite television, increase television service competition, and improve choices for consumers. Chairman Tauzin is currently recovering from a bout with cancer. My understanding is that he is doing so with his characteristic vigor and good humor, and is faring well. I am sure all join me in wishing him a speedy recovery.

H.R. 4518 reauthorizes certain expiring communications and copyright act provisions that govern the retransmission of broadcast television signals by direct broadcast satellite (DBS) providers such as DirecTV and EchoStar. It also modernizes other provisions to enhance consumer choice, increase parity between satellite and cable operators, and further promote competition. Because the bill implicates both communications and copyright issues, the House Energy and Commerce Committee and the House Judiciary Committee have worked closely in drafting the legislation.

Indeed, pursuant to a compromise between the House Energy and Commerce Committee and the House Judiciary Committee, H.R. 4518 has now been amended to combine its copyright provisions with the Communications Act provisions of H.R. 4501. H.R. 4501 resulted from an extensive examination of satellite television issues in the House Energy and Commerce Committee. The Subcommittee on Telecommunications and the Internet held an oversight hearing on March 10, 2004, and a legislative hearing on April 1, 2004. The Subcommittee then marked up legislation on April 28, 2004, and the full Committee marked up legislation on June 3, 2004. That legislation became H.R. 4501. The Committee filed a report on H.R. 4501 (H. Rept. 108–634) on July 22, 2004.

What follows is a section-by-section analysis of some of the Communications provisions in Title II of H.R. 4518, as amended, that have changed from the provisions that originated in H.R. 4501. Mr. Upton, Chairman of the House Energy and Commerce Subcommittee on Telecommunications and the Internet, also will address some of the changes.

SECTION 202. CABLE/SATELLITE COMPARABILITY

Section 340(a) authorizes a satellite operator to retransmit an out-of-market signal to a subscriber in a community if the signal is significantly viewed over the air in the community. A satellite operator may carry such a signal whether or not the station is affiliated with a network, as evidenced by section 340(a)'s reference to the carriage of ''the signal of any station located outside the local market'' that is significantly viewed, as opposed to any ''network station'' (emphasis added). In the cable context, the FCC allows a cable operator to carry the digital signal of a broadcast station as significantly viewed once the FCC has ruled that the analog signal of the station is significantly viewed. In re Carriage of Digital Television Broadcast Signals, CS Docket No. 98–120, First Report and Order & Further Notice of Proposed Rulemaking, FCC 01–22, at ¶ 100. In implementing Section 340, the FCC should treat satellite operators in a comparable fashion to cable operators to the greatest extent possible with respect to carriage of significantly viewed stations, in terms of both current and future significantly viewed rulings.

Section 340(a) also provides that a satellite operator may carry an unlimited number of significantly viewed signals, just as a cable operator may. Section 340(a) does so by explicitly stating that satellite operators may retransmit such signals ''[i]n addition to the broadcast signals that subscribers may receive under section 338 [governing carriage of local signals] and 339 [governing carriage of distant signals].'' This clarification for significantly viewed signals is necessary because section 339 of the Communications Act (47 U.S.C. § 339) prohibits a satellite carrier from providing a household with the signals of more than two distant affiliates of a particular network per day.

Section 340(a)(1) provides that satellite operators are allowed to carry as significantly viewed any signal that the FCC has previously determined to be significantly viewed for purposes of cable carriage subject, however, to the FCC's network non-duplication and syndicated exclusivity rules. Satellite carriers are authorized upon enactment of SHVERA to carry such signals.

Section 340(a)(2) provides that satellite operators may also carry as significantly viewed any signals that the FCC determines in the future to be significantly viewed, so long as the FCC applies the same criteria to determine whether a signal is significantly viewed for purposes of both cable and satellite carriage. The FCC may also make significantly viewed determinations in areas without cable service, again, so long as it uses the same criteria as it applies in determining whether a signal is significantly viewed for purposes of cable carriage. Because current regulations provide only for cable carriage of significantly viewed signals, the FCC now bases significantly-viewed determinations on cable communities. In areas of the country that do not have cable service, there is no cable community. Section 340(a)(2) is intended to allow satellite operators to carry a significantly viewed signal in a community where no cable franchise exists so long as the signal is significantly viewed in the community based on the same quantitative criteria as currently apply to cable operators. See 47 C.F.R. §§ 76.5(i), 76.54. Section 340(i)(3) authorizes the FCC to define what constitutes a satellite community for these purposes. Any signal the FCC determines to be significantly viewed for purposes of satellite carriage in an area where cable is not present would also be significantly viewed for cable carriage should a cable operator enter the community in the future. The FCC shall maintain a unified list of significantly viewed stations and communities, which will apply to both cable and satellite operators.

Section 340(b)(1) provides that a satellite operator may retransmit a significantly viewed analog signal of a distant network station to a subscriber in a local market only if the subscriber also receives local-into-local service under section 338 of the Communications Act. Similarly, section 340(b)(2)(A) conditions retransmission to a subscriber of a significantly viewed digital signal of a distant network broadcast station on retransmission to that subscriber of a digital signal broadcast by a local affiliate of the same network.

Section 340(b)(2)(B) prevents the satellite operator from retransmitting a local affiliate's digital signal in a less robust format than a significantly viewed digital signal of a distant affiliate of the same network, such as by down-converting the local affiliate's signal but not the distant affiliate's signal from high-definition digital format to analog or standard definition digital format. Section 340(b)(2)(B)(i) requires carriage of the ''equivalent bandwidth'' to recognize, for example, that a local affiliate may be multicasting while a distant affiliate of the same network may be broadcasting in high-definition, and to ensure that the local affiliate's choice to multicast does not prevent the satellite operator from retransmitting a significantly viewed signal of a distant affiliate of the network that chooses to broadcast in high-definition. Section 340(b)(2)(B)(ii) requires carriage of the ''entire bandwidth'' to ensure that a satellite operator may still retransmit a distant significantly viewed digital signal of a network affiliate in a more robust format than a digital signal of a local broadcaster of the same network so long as the satellite operator is carrying the digital signal of the local affiliate in its original format. For example, if a local broadcaster chooses to transmit only a single, standard definition digital broadcast stream, the satellite operator may still retransmit multicast or high-definition streams from a distant affiliate of the same network if the satellite operator carries the local broadcaster's standard definition stream and meets the other conditions for the provision of significantly viewed signals. Section 340(i)(4) directs the FCC to define ''equivalent bandwidth'' and ''entire bandwidth'' by regulation. Section 340(b)(2)(B) is not intended to prevent a satellite operator from using compression technology; to require a satellite operator to use the identical bandwidth or bit rate as that used by the local or distant broadcaster whose signal it is retransmitting; or to require a satellite operator to use the identical bandwidth or bit rate for a local broadcaster as it does for a distant broadcaster. Nor is section 340(b)(2)(B) intended to affect a satellite operator's carry-one, carry-all obligations, or the definitions of ''program related'' and ''primary video.''

The limitations of section 340(b)(1) and section 340(b)(2) specifically apply only to carriage of ''network stations.'' Non-network broadcast stations by definition do not belong to a network. Thus, the limitations in section 340(b)(1) and section 340(b)(2) do not restrict a satellite operator's carriage of a significantly viewed signal of a non-network broadcast station.

Section 340(b)(3) provides that the absence of an affiliate of a particular network in a local market does not prevent a satellite operator from retransmitting a significantly viewed signal of a distant broadcast station from that network. Many markets do not have a full complement of network affiliates. This provision allows a satellite provider to retransmit into such a market a distant significantly viewed analog signal of a network broadcast station even though the market does not have a local affiliate from the same network. Similarly, it allows a satellite operator to retransmit into a market a distant significantly viewed digital signal of a network broadcast station if the market does not have a local affiliate from the same network.

Section 340(b)(4) allows a local network affiliate to waive the limitations in sections 340(b)(1) or 340(b)(2) as they apply to the retransmission, into the local affiliate's local market, of a significantly viewed signal of a distant station affiliated with the same network. The waiver can be as broad or as narrow as the affiliate wants. For example, a local affiliate can waive the application of sections 340(b)(1) or 340(b)(2) to one or more consumers in the local market, with respect to one or more specific distant affiliates of the same network, and with respect to one or more satellite operators. The broadcaster may do so as part of a negotiated agreement and for any reason, including common ownership among the stations. This is intended to be a private negotiation, not one over which the FCC or any other governmental body must preside; nor must any governmental body grant or approve the waiver. Whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, although a broadcaster may grant a waiver as part of an agreement made with a satellite operator or other parties. A broadcaster is also not required to execute any particular document as part of the waiver process, although parties who intend to rely on such a waiver or any attendant agreement will likely want to reduce the waiver and the agreement to writing, so that they have something to refer to should any dispute arise in the future. Such waivers are distinct from the waivers referred to in section 339(c)(2) of the Communications Act, although broadcasters are free to execute both types of waivers in tandem or with a single document. Unlike the section 339(c)(2) waivers, broadcasters must affirmatively grant section 340(b)(4) waivers; they shall not be deemed granted by the broadcaster just because the broadcaster has not responded to a request within a certain amount of time. Nor are section 340(b)(4) waivers or agreements subject to the section 325 good-faith negotiation requirement. Section 340(b)(4) will facilitate agreements that provide consumers with more viewing choices.

Section 340(c)(1) gives the FCC 60 days from enactment of SHVERA to publish a consolidated list of the current stations and the communities in which they are significantly viewed, as well as to commence a rulemaking proceeding to implement new section 340. The FCC will have one year from enactment of SHVERA to complete the rulemaking.

Section 340(c)(2) requires the FCC to make the significantly-viewed list publicly available in electronic form, and to update it within 10 business days of any modifications. Ways it may do so include posting the list on the Internet or making an electronic file of the list available for download.

Section 340(c)(3) makes clear that satellite operators may petition the FCC to add stations or communities to the significantly-viewed list as well as to have the network nonduplication or syndicated exclusivity rules applied in certain communities to stations on the list.

Section 340(d)(1) makes clear that carriage in a local market of a distant significantly viewed signal is not mandatory. Cable operators are under no obligation to carry in a local market a distant significantly viewed signal, and satellite carriage of such a distant signal in a local market is to be similarly voluntary. Section 340(d)(1) also makes clear that any right of a station to have its signal carried in a local market under the carry-one, carry-all provisions of section 338 is not affected by the significantly viewed status of the signal in another market.

Section 340(d)(2) provides that the status of a distant signal as significantly viewed does not affect whether a satellite operator must get retransmission consent to carry that signal into a local market. Cable operators must obtain retransmission consent to carry distant significantly viewed signals into a local market and the same obligation shall apply to satellite operators. If the satellite operator is exempt from having to obtain retransmission consent for other reasons, however, then retransmission consent would not be necessary. For example, a satellite operator is exempt under section 325(b) (47 U.S.C. § 325(b)) from having to obtain retransmission consent when providing a distant signal of a network to an unserved subscriber who cannot receive an adequate over-the-air signal from an affiliate of the same network. The satellite operator would still be exempt from having to negotiate retransmission consent when providing a significantly viewed signal if it was providing it as a distant signal to an unserved consumer.

Section 340(e) allows the FCC to apply its network non-duplication and syndicated exclusivity rules to ''remove'' stations from the significantly viewed list as applied to satellite operators in a similar manner as it currently does

with cable operators. Many, if not all, broadcast stations enter into contracts to be the sole providers of particular network or syndicated programming within a certain geographic radius. See 47 C.F.R. §§ 76.93, 76.103. When broadcast stations do so, the FCC's network non-duplication and syndicated exclusivity rules generally require cable operators to black out the duplicative programming when they retransmit signals from distant stations into the protected areas. See 47 C.F.R. §§ 76.92, 76.101. If the FCC determines that a distant signal is significantly viewed in a community, the FCC exempts the signal from the network non-duplication and syndicated exclusivity rules so that the cable operator can carry the distant signal, including the duplicative programming, into the local market. See 47 C.F.R. §§ 76.92(1), 76.106(a). If the signal ever loses viewership such that it no longer qualifies as significantly viewed, the FCC does not literally remove the signal from the significantly viewed list, but parties can petition the FCC to re-impose the blackout obligations.

In the satellite context, however, the network non-duplication and syndicated exclusivity rules ordinarily apply only to retransmission of nationally distributed superstations. See 47 C.F.R. 76.120(b), §§ 76.122, 76.123. They do not currently apply to retransmission of distant signals of network stations or non-network stations that are not superstations. Section 340(e)(1) is intended to give the FCC authority to apply the network non-duplication and syndicated exclusivity rules to distant signals of network or non-network stations in a way that replicates, where and when appropriate, the way the FCC ''removes'' signals from the significantly viewed list for cable. Section 340(e)(2) makes clear that section 340(e)(1) does not authorize the FCC to apply the network non-duplication and syndicated exclusivity rules to other lawful retransmissions of distant signals of network or non-network stations, such as when a consumer is unserved over the air.

TRIBUTE TO THE LATE MEREDITH DOCKING

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 2004

Mr. MOORE. Mr. Speaker, I rise today to pay tribute to the late Meredith Docking, widow of former Kansas Governor Robert Docking, who served as First Lady of Kansas from 1967 to 1975. Meredith Docking passed away on October 27th, at her home in Lawrence, Kansas, after a valiant struggle with pancreatic cancer. Earlier, she lived in Arkansas City, where the Docking family owned Union State Bank.

Meredith Gear Docking was born July 15, 1926, in Elkhart, Kansas, the daughter of George Russell and Irene Griffith Gear. She graduated from the University of Kansas in 1947 with a bachelor's degree in business. She married Robert Docking on June 17, 1950. His father, George Docking, was elected governor of Kansas in 1956 and 1950, ushering into Kansas its current era of two-party politics. Robert Docking, the only Kansan elected governor of the state four times—in 1966, 1968, 1970 and 1972—died in 1983. Their son, Tom, served as lieutenant governor of Kansas from 1983–1987, under Governor John Carlin. Another son, Bill, now serves as a member of the Kansas Board of Regents.

A woman of grace and dignity, Meredith Docking represented her state during the turbulent times of the late 1960s and early 1970s, served charitable and civic organizations, and participated in Democratic Party political activities with her husband and father-in-law. I enclose in the RECORD as a part of this tribute two articles carried by the local press upon Meredith Docking's death, from The Wichita Eagle and The Lawrence Journal–World, which summarize her activities and impact upon our state. It is fitting that Meredith Docking had named in her honor the ''Meredith Rose'', a pink rose that is now found in parks and arrangements in Arkansas City, Wichita and Lawrence, Kansas. All Kansans mourn her passing, but as her family members have done, we find inspiration in her life and legacy.

[From the Wichita Eagle, Oct. 28, 2004]

MEREDITH DOCKING, FORMER FIRST LADY OF KANSAS, DIES

(By Beccy Tanner)

Meredith Docking—the first lady of Kansas from 1967 through 1975 and for whom a pink rose is named—died Wednesday at her home in Lawrence. She was 78.

Mrs. Docking was the wife of Robert Docking and the daughter-in-law to George Docking, both Kansas governors. Her son, Tom, was lieutenant governor. ''From my perspective, she was a great mother, very supportive of the family and tried to help each family member do what was important to them,'' said William Docking of Arkansas City. ''But personally, she didn't care much for politics. She recognized how important the political process is and was for so many of our family members—but she was a private person and did not care for politics.''

Services will be at 10 a.m. Friday at the First Christian Church in Lawrence.

Meredith Gear was born July 15, 1926, in Elkhart. She received her bachelor's degree in business from the University of Kansas in 1947. Her husband, Robert, graduated from KU in 1948. They married in 1950 and lived in Arkansas City, where he was president of Union State Bank. Robert Docking also served Arkansas City as a city commissioner and mayor until 1966, when he was elected governor. ''She fit nicely in the mold of first ladies of that era—who were more traditional,'' said her son, Tom Docking of Wichita.

Mrs. Docking was first lady of Kansas at a time when national politics and world events were volatile—the United States was caught up in the Vietnam War, university students throughout the nation were holding protests, and race riots were breaking out in major cities.

Mrs. Docking's role as first lady was to entertain dignitaries and conduct tours of the governor's mansion. When Bobby and Ethel Kennedy came to Kansas, they stayed with the Dockings.

After her husband's four terms as governor, Mrs. Docking helped establish the Docking Faculty Scholar Program at KU. She also served on several boards throughout the state. Her husband died in 1983. In January, Mrs. Docking learned that she had pancreatic cancer. ''My mother always believed that if you had 75 good years you ought to consider yourself fortunate,'' Bill Docking said. ''She was 77 when she was diagnosed and died when she was 78. There was no hand-wringing or asking 'Why me?' She was not fearful of death in any way.''

April 30 of this year was designated ''Meredith Docking Day'' and Arbor Day in Arkansas City. The cities of Lawrence, Wichita and Arkansas City have planted hundreds of pink ''Meredith'' roses named in her honor.

She is survived by her sons, William, Arkansas City, and Tom, Wichita; a sister, Virginia Winslow, Bradbury, Calif.; and three grandchildren.

[From the Lawrence Journal-World, Oct. 28, 2004]

FORMER FIRST LADY DOCKING DIES

(By Mike Belt)

Former first lady of Kansas and longtime Kansas University benefactor Meredith Docking died Wednesday at her home in Lawrence. ''She was a wonderful mother and grandmother, and she had great relationships with so many friends,'' said her son, Bill Docking. ''She lived an interesting life.''

Meredith Docking, 78, the wife of the late governor Robert Docking, died a few minutes after 6 a.m. with her family around her. Bill Docking said she had been diagnosed last winter with terminal pancreatic cancer. ''Throughout her illness she was so brave,'' said close friend Kittye Hagen, of Lawrence. ''She was a great wit and a lot of fun.''

Robert Docking served as governor from 1967 to 1975. But while the family lived in the governor's Cedar Crest mansion in Topeka, Meredith never lost her simple ways, Hagen said. ''She was one of the first ladies who didn't go over her budget,'' Hagen said. ''She was very thrifty. She was as thrifty with the state's money as she was with her own.''

At the same time, Meredith Docking often donated money to worthy causes anonymously, Hagen said. ''She did a lot of things people, including her family, didn't know about,'' Hagen said. ''She never failed to do what she could to help.''

Meredith Docking was a longtime supporter of KU, a member of the KU Alumni Association and the Outlook Society, which honors donors of $500,000 or more through the Chancellor's Club, KU Endowment's major-donor organization.

In 1999, she donated $1 million to KU to create the Docking Faculty Scholars Award to honor and keep exceptional KU teachers and scholars. ''Meredith Docking's gifts to the university, as a volunteer, a donor and an inspiration, were felt throughout the campus,'' KU Chancellor Robert Hemenway said.

She graduated in 1947 from KU, where she met her husband, the future governor who graduated in 1948. Gov. Kathleen Sebelius noted Meredith Docking's civic contributions and ''quiet strength.'' ''For eight years Meredith Docking represented Kansas with grace, dignity and warmth as our first lady,'' Sebelius said. ''After leaving Cedar Crest, she maintained a respected presence throughout the state and was always a great booster of the state of Kansas.''

Meredith Docking was well-known for her fondness for roses and was involved in beautification efforts in Arkansas City and in Lawrence, where she had lived. For her 75th birthday her family commissioned a California company to create a rose in her honor, Bill Docking said. They named it the Meredith Rose, and many of them can be found in Arkansas City parks and in Wichita. In Lawrence the Meredith Rose is in front of the Lawrence Visitor Center, 402 N. Second St., and in the Audio-Reader Garden next to the Behr Audio-Reader Center at KU. ''It's really a lovely pink rose and very fragrant,'' Bill Docking said.

Meredith Docking loved watching the TV show ''Jeopardy,'' which once featured a question about the Kansas governor, and host Art Fleming mentioned that the governor's wife was a big fan of the show, Bill